

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL E. NAGY, et al.,

Plaintiffs,

v.

CEP AMERICA, LLC, et al.,

Defendants.


Case No. [23-cv-05648-RS](#)

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE SUR-REPLY**

Plaintiffs move for leave to file a three-page sur-reply in response to what they claim is an argument raised for the first time in Defendants' motion to dismiss reply brief. They argue a sur-reply is necessary to respond to the new argument that otherwise controlling Ninth Circuit law has since been undermined by two Supreme Court decisions. It appears Defendants' argument should have been raised in their opening brief and that Plaintiffs would be prejudiced were they not afforded the opportunity to respond. *See, e.g., Acasio v. Lucy*, No. 14-cv-4689, 2017 WL 1316537, at \*10 (N.D. Cal. Apr. 10, 2017) ("Courts routinely refuse to consider argument or authorities raised for the first time in a reply brief because the opposing party has no meaningful opportunity to respond."). Therefore, Plaintiffs are directed to file their sur-reply brief on the docket by Thursday, April 25, 2024. Defendants' request to file their own sur-reply is denied.

**IT IS SO ORDERED.**

1 Dated: April 22, 2024

2   
3 RICHARD SEEBORG  
4 Chief United States District Judge

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
United States District Court  
Northern District of California